

**ASSEMBLY BILL**

**No. 1527**

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**Introduced by Assembly Member Arambula**

February 23, 2007

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An act to add Sections 17052.15 and 23615 to, and to add and repeal Sections 17052.13, 17052.14, 23613, and 23614 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1527, as introduced, Arambula. Income and corporation taxes: credits: Cleantech Advantage Act of 2008.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would authorize a credit against those taxes for each taxable year beginning on or after January 1, 2008, and before January 1, 2013, in an amount equal to 8% of the amount paid or incurred by a qualified taxpayer for qualified costs, as defined, related to cleantech manufacturing activities. This bill would also authorize a credit against those taxes for each taxable year beginning on or after January 1, 2008, and before January 1, 2013, in an amount equal to 20% of the net tax expenses paid or incurred by a qualified taxpayer for qualified research in California, as defined, related to cleantech industries.

This bill would allow up to 50% of unused credits allowed to a qualified seller to be sold or traded to, and be used by, a qualified buyer, as defined.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. This act shall be known and may be cited as the  
2 California Cleantech Advantage Act of 2008.

3 SEC. 2. (a) The Legislature finds and declares:

4 (1) That the enactment of Assembly Bill 32 (Chapter 488,  
5 Statutes of 2006) made California a national and global policy  
6 leader in the effort to reduce greenhouse gases that pose serious  
7 threats to our natural environment and to our residents' health and  
8 safety.

9 (2) That the prospect of global warming is very real and may  
10 already be impacting our climate and ecosystems.

11 (3) That there is an urgent need to develop, market, and use  
12 products, equipment, and services that reduce the formation of  
13 greenhouse gases.

14 (b) The Legislature further finds and declares:

15 (1) That the level of national and global concern over greenhouse  
16 gas emissions has begun to focus American technological research  
17 and investment on developing industrial and consumer products  
18 and processes that produce zero or ultra-low emissions of carbon  
19 dioxide, the primary greenhouse gas.

20 (2) Nationally, in 2006, as much as \$63 billion was invested in  
21 clean technologies, also called "cleantech."

22 (3) California received only 31 percent of venture capital  
23 invested nationally in cleantech, as compared to 63 percent of the  
24 nation's venture capital invested in the computer industry.

25 (c) The Legislature further finds and declares:

26 (1) It is in the best interest of this state to expeditiously foster  
27 a competitive cleantech industry in California by offering investors  
28 financial incentives to spur cleantech research and development,  
29 production, and utilization of environmentally clean products.

30 (2) That growing cleantech investment will help create as many  
31 as 114,000 new, high-paying, skilled jobs, improve the state's air  
32 and water quality, and offer business reliable and affordable sources  
33 of alternative energy.

34 (d) Therefore, it is the intent of the Legislature to enact and  
35 enhance targeted tax credits to increase investment in cleantech  
36 activities and the production of environmentally clean  
37 manufacturing equipment, as well as maintain and enhance this

1 state’s competitive lead in attracting investment capital, clean  
2 industry, and high-paying, skilled jobs.

3 SEC. 3. Section 17052.13 is added to the Revenue and Taxation  
4 Code, to read:

5 17052.13. (a) For each taxable year beginning on or after  
6 January 1, 2008, and before January 1, 2013, there shall be allowed  
7 to a qualified taxpayer as a credit against the “net tax,” as defined  
8 in Section 17039, an amount equal to 8 percent of the qualified  
9 costs on or after January 1, 2008, for qualified cleantech property  
10 that is placed in service in this state.

11 (b) For purposes of this section:

12 (1) “Fabricating” means to make, build, create, produce, or  
13 assemble components or property to work in a new or different  
14 manner.

15 (2) “Manufacturing” means the activity of converting or  
16 conditioning property by changing the form, composition, quality,  
17 or character of the property for ultimate sale at retail or use in the  
18 manufacturing of a product to be ultimately sold at retail.  
19 Manufacturing includes any improvements to tangible personal  
20 property that result in a greater service life or greater functionality  
21 than that of the original property.

22 (3) “Processing” means the physical application of the materials  
23 and labor necessary to modify or change the characteristics of  
24 property.

25 (4) (A) “Tangible personal property” means all of the following:

26 (i) Tangible personal property purchased for use by a qualified  
27 taxpayer to be used primarily in any stage of the manufacturing,  
28 processing, refining, fabricating, or recycling of property,  
29 beginning at the point any raw materials are received by the  
30 qualified person and introduced into the process and ending at the  
31 point at which the manufacturing, processing, refining, fabricating,  
32 or recycling has altered property to its completed form, including  
33 packaging, if required.

34 (ii) Tangible personal property purchased for use by a qualified  
35 taxpayer to be used primarily in research and development.

36 (iii) Tangible personal property purchased for use by a qualified  
37 taxpayer to be used primarily to maintain, repair, measure, or test  
38 any property described in paragraph (1) or (2).

39 (iv) Tangible personal property purchased for use by a contractor  
40 purchasing that property either as an agent of a qualified taxpayer

1 or for the contractor’s own account and subsequent resale to a  
2 qualified person for use in the performance of a construction  
3 contract for the qualified taxpayer who will use the tangible  
4 personal property as an integral part of the manufacturing,  
5 processing, refining, fabricating, or recycling process, or as a  
6 research or storage facility for use in connection with the  
7 manufacturing process.

8 (B) “Property” does not include any property that is leased by  
9 a qualified person to another person.

10 (5) “Qualified cleantech property” means any tangible personal  
11 property that uses technology to compete favorably on price and  
12 performance while reducing pollution, waste, and use of natural  
13 resources and that focuses on the environmental impact of human  
14 activities. “Qualified cleantech property” includes, but is not  
15 limited to, tangible personal property that uses wind, solar,  
16 biomass, and hydrogen technologies that result in cleaner air and  
17 water, encourage the reuse of materials, and result in reductions  
18 of greenhouse gas emissions.

19 (6) “Qualified costs” means the amount paid or incurred by a  
20 qualified taxpayer for acquiring and installing qualified cleantech  
21 property that is placed in service in this state.

22 (7) “Qualified taxpayer” means a small business, as defined in  
23 Section 14837 of the Government Code, that has a gross income  
24 of less than ten million dollars (\$10,000,000) that is earned in  
25 California.

26 (8) “Refining” means the process of converting a natural  
27 resource to an intermediate or finished product.

28 (9) “Tangible personal property” does not include consumables  
29 with a normal useful life of less than one year, except as provided  
30 in subparagraph (E) of paragraph (10), and does not include  
31 furniture, inventory, equipment used in the extraction process, or  
32 equipment used to store finished products that have completed the  
33 manufacturing process.

34 (10) “Tangible personal property” includes, but is not limited  
35 to, all of the following:

36 (A) Machinery and equipment, including component parts and  
37 contrivances such as belts, shafts, moving parts, and operating  
38 structures.

39 (B) All equipment or devices used or required to operate,  
40 control, regulate, or maintain the machinery, including, without

1 limitation, computers, data processing equipment, and computer  
2 software, together with all repair and replacement parts with a  
3 useful life of one or more years therefor, whether purchased  
4 separately or in conjunction with a complete machine and  
5 regardless of whether the machine or component parts are  
6 assembled by the taxpayer or another party.

7 (C) Property used in pollution control that meets or exceed  
8 standards established by the State Air Resources Board of the  
9 Water Resources Control Board.

10 (D) Special purpose buildings and foundations used as an  
11 integral part of the manufacturing, processing, refining, or  
12 fabricating process, or that constitute a research or storage facility  
13 used during the manufacturing process. Buildings used solely for  
14 warehousing purposes after completion of the manufacturing  
15 process are not included.

16 (E) Fuels used or consumed in the manufacturing process.

17 (F) Property used in recycling.

18 (c) No credit, no further credit in any subsequent year, and no  
19 credit carryover shall be allowed with respect to the qualified  
20 cleantech property to any qualified taxpayer beginning in the year  
21 in which that qualified cleantech property for which a credit was  
22 allowed under this section is disposed of or removed from this  
23 state within one year of the date of purchase.

24 (d) In the case where the credit allowed by this section exceeds  
25 the “net tax,” the excess may be carried over to reduce the “net  
26 tax” in the following year, and the succeeding eight years, until  
27 the credit is exhausted.

28 (e) This section shall remain in effect only until January 1, 2013,  
29 and as of that date is repealed, unless a later enacted statute, which  
30 is enacted before January 1, 2013, deletes or extends that date.  
31 However, any unused credit may continue to be carried forward,  
32 as provided in subdivision (d), until the credit is exhausted.

33 SEC. 4. Section 17052.14 is added to the Revenue and Taxation  
34 Code, to read:

35 17052.14. (a) For each taxable year beginning on or after  
36 January 1, 2008, and before January 1, 2013, there shall be allowed  
37 as a credit against the “net tax,” as defined by Section 17039, to  
38 a taxpayer an amount determined in accordance with Section 41  
39 of the Internal Revenue Code for qualified research conducted in  
40 this state.

1 (b) For purposes of this section:

2 (1) “Qualified research” means research that is dedicated to the  
3 development of cleantech technologies, including those that use  
4 technology to compete favorably on price and performance while  
5 reducing pollution, waste, and use of natural resources and that  
6 focuses on the environmental impact of human activities.  
7 “Qualified research” includes, but is not limited to, research into  
8 cleantech technology that uses wind, solar, biomass, and hydrogen  
9 technologies that result in cleaner air and water, encourage the  
10 reuse of materials, and result in reductions of greenhouse gas  
11 emissions.

12 (2) The reference to “Section 501(a)” in Section 41(b)(3)(C) of  
13 the Internal Revenue Code, relating to contract research expenses,  
14 is modified to read “this part or Part 11 (commencing with Section  
15 23001).”

16 (c) (1) The provisions of Section 41(c)(4) of the Internal  
17 Revenue Code relating to the election to use an alternate  
18 incremental credit apply, except that the reference to the  
19 “Secretary” in Section 41(c)(4)(B) of the Internal Revenue Code  
20 shall be modified to, instead, refer to the “Franchise Tax Board.”

21 (2) Section 41(c)(6) of the Internal Revenue Code, relating to  
22 gross receipts, is modified to take into account only those gross  
23 receipts from the sale of property held primarily for sale to  
24 customers in the ordinary course of the taxpayer’s trade or business  
25 that is delivered or shipped to a purchaser within this state,  
26 regardless of freight on board (f.o.b.) point or any other condition  
27 of the sale.

28 (d) Section 41(h) of the Internal Revenue Code, relating to  
29 termination, shall not apply.

30 (e) Section 41(g) of the Internal Revenue Code, relating to  
31 special rule for passthrough of credit, is modified by each of the  
32 following:

33 (1) The last sentence shall not apply.

34 (2) If the amount determined under Section 41(a) of the Internal  
35 Revenue Code for any taxable year exceeds the limitation of  
36 Section 41(g) of the Internal Revenue Code, that amount may be  
37 carried over to other taxable years under the rules of subdivision  
38 (g) except that the limitation of Section 41(g) of the Internal  
39 Revenue Code shall be taken into account in each subsequent  
40 taxable year.

1 (f) Any deduction otherwise allowed under this part for any  
2 amount paid or incurred by the taxpayer upon which the credit is  
3 based shall be reduced by the amount of the credit allowed by this  
4 section.

5 (g) In the case where the credit allowed under this section  
6 exceeds the “net tax,” the excess may be carried over to reduce  
7 the “net tax” in the following year, and the succeeding eight years  
8 if necessary, until the credit has been exhausted.

9 (h) This section shall remain in effect only until January 1, 2013,  
10 and as of that date, is repealed. However, any unused credit may  
11 be carried over and used after that repeal date in accordance with  
12 subdivision (g).

13 SEC. 5. Section 17052.15 is added to the Revenue and Taxation  
14 Code, to read:

15 17052.15. (a) Notwithstanding any provision of law to the  
16 contrary, and except as otherwise provided in this section, up to  
17 50 percent of any unused qualified tax credit allowed to a qualified  
18 buyer may be sold or traded to, and used by, a qualified buyer.

19 (b) For purposes of this section:

20 (1) “Qualified buyer” means any company that employs workers  
21 in this state.

22 (2) “Qualified seller” means a taxpayer that was allowed tax  
23 credits under Section 17052.13 or 17052.14.

24 (3) “Qualified tax credit” means a tax credit allowed to a  
25 taxpayer under Section 17052.13 or 17052.14.

26 (c) Unused tax credits may be sold or traded by a qualified seller  
27 during any taxable year beginning on or after January 1, 2008, but  
28 may be used by a qualified buyer only for taxable years beginning  
29 on or after January 1, 2009.

30 (d) A qualified seller and qualified buyer shall apply to the  
31 Franchise Tax Board, in the form and manner determined by the  
32 board, for the purchase and sale of, or the trade of, any unused  
33 qualified tax credit under this section.

34 SEC. 6. Section 23613 is added to the Revenue and Taxation  
35 Code, to read:

36 23613. (a) For each taxable year beginning on or after January  
37 1, 2008, and before January 1, 2013, there shall be allowed to a  
38 qualified taxpayer as a credit against the “tax,” as defined in  
39 Section 23036, an amount equal to 8 percent of the qualified costs

1 on or after January 1, 2008, for qualified cleantech property that  
2 is placed in service in this state.

3 (b) For purposes of this section:

4 (1) “Fabricating” means to make, build, create, produce, or  
5 assemble components or property to work in a new or different  
6 manner.

7 (2) “Manufacturing” means the activity of converting or  
8 conditioning property by changing the form, composition, quality,  
9 or character of the property for ultimate sale at retail or use in the  
10 manufacturing of a product to be ultimately sold at retail.  
11 Manufacturing includes any improvements to tangible personal  
12 property that result in a greater service life or greater functionality  
13 than that of the original property.

14 (3) “Processing” means the physical application of the materials  
15 and labor necessary to modify or change the characteristics of  
16 property.

17 (4) (A) “Tangible personal property” means all of the following:

18 (i) Tangible personal property purchased for use by a qualified  
19 taxpayer to be used primarily in any stage of the manufacturing,  
20 processing, refining, fabricating, or recycling of property,  
21 beginning at the point any raw materials are received by the  
22 qualified person and introduced into the process and ending at the  
23 point at which the manufacturing, processing, refining, fabricating,  
24 or recycling has altered property to its completed form, including  
25 packaging, if required.

26 (ii) Tangible personal property purchased for use by a qualified  
27 taxpayer to be used primarily in research and development.

28 (iii) Tangible personal property purchased for use by a qualified  
29 taxpayer to be used primarily to maintain, repair, measure, or test  
30 any property described in paragraph (1) or (2).

31 (iv) Tangible personal property purchased for use by a contractor  
32 purchasing that property either as an agent of a qualified taxpayer  
33 or for the contractor’s own account and subsequent resale to a  
34 qualified person for use in the performance of a construction  
35 contract for the qualified taxpayer who will use the tangible  
36 personal property as an integral part of the manufacturing,  
37 processing, refining, fabricating, or recycling process, or as a  
38 research or storage facility for use in connection with the  
39 manufacturing process.

1 (B) “Property” does not include any property that is leased by  
2 a qualified person to another person.

3 (5) “Qualified cleantech property” means any tangible personal  
4 property that uses technology to compete favorably on price and  
5 performance while reducing pollution, waste, and use of natural  
6 resources and that focuses on the environmental impact of human  
7 activities. “Qualified cleantech property” includes, but is not  
8 limited to, tangible personal property that uses wind, solar,  
9 biomass, and hydrogen technologies that result in cleaner air and  
10 water, encourage the reuse of materials, and result in reductions  
11 of greenhouse gas emissions.

12 (6) “Qualified costs” means the amount paid or incurred by a  
13 qualified taxpayer for acquiring and installing qualified cleantech  
14 property that is placed in service in this state.

15 (7) “Qualified taxpayer” means a small business, as defined in  
16 Section 14837 of the Government Code, that has a gross income  
17 of less than ten million dollars (\$10,000,000) that is earned in  
18 California.

19 (8) “Refining” means the process of converting a natural  
20 resource to an intermediate or finished product.

21 (9) “Tangible personal property” does not include consumables  
22 with a normal useful life of less than one year, except as provided  
23 in subparagraph (E) of paragraph (10), and does not include  
24 furniture, inventory, equipment used in the extraction process, or  
25 equipment used to store finished products that have completed the  
26 manufacturing process.

27 (10) “Tangible personal property” includes, but is not limited  
28 to, all of the following:

29 (A) Machinery and equipment, including component parts and  
30 contrivances such as belts, shafts, moving parts, and operating  
31 structures.

32 (B) All equipment or devices used or required to operate,  
33 control, regulate, or maintain the machinery, including, without  
34 limitation, computers, data processing equipment, and computer  
35 software, together with all repair and replacement parts with a  
36 useful life of one or more years therefor, whether purchased  
37 separately or in conjunction with a complete machine and  
38 regardless of whether the machine or component parts are  
39 assembled by the taxpayer or another party.

1 (C) Property used in pollution control that meets or exceed  
2 standards established by the State Air Resources Board of the  
3 Water Resources Control Board.

4 (D) Special purpose buildings and foundations used as an  
5 integral part of the manufacturing, processing, refining, or  
6 fabricating process, or that constitute a research or storage facility  
7 used during the manufacturing process. Buildings used solely for  
8 warehousing purposes after completion of the manufacturing  
9 process are not included.

10 (E) Fuels used or consumed in the manufacturing process.

11 (F) Property used in recycling.

12 (c) No credit, no further credit in any subsequent year, and no  
13 credit carryover shall be allowed with respect to the qualified  
14 cleantech property to any qualified taxpayer beginning in the year  
15 in which that qualified cleantech property for which a credit was  
16 allowed under this section is disposed of or removed from this  
17 state within one year of the date of purchase.

18 (d) In the case where the credit allowed by this section exceeds  
19 the “tax,” the excess may be carried over to reduce the “tax” in  
20 the following year, and the succeeding eight years, until the credit  
21 is exhausted.

22 (e) This section shall remain in effect only until January 1, 2013,  
23 and as of that date is repealed, unless a later enacted statute, which  
24 is enacted before January 1, 2013, deletes or extends that date.  
25 However, any unused credit may continue to be carried forward,  
26 as provided in subdivision (d), until the credit is exhausted.

27 SEC. 7. Section 23614 is added to the Revenue and Taxation  
28 Code, to read:

29 23614. (a) For each taxable year beginning on or after January  
30 1, 2008, and before January 1, 2013, there shall be allowed as a  
31 credit against the “tax” as defined by Section 23036 to a taxpayer  
32 an amount determined in accordance with Section 41 of the Internal  
33 Revenue Code for qualified research conducted in this state.

34 (b) For purposes of this section:

35 (1) “Qualified research” means research that is dedicated to the  
36 development of cleantech technologies, including those that use  
37 technology to compete favorably on price and performance while  
38 reducing pollution, waste, and use of natural resources and that  
39 focuses on the environmental impact of human activities.  
40 “Qualified research” includes, but is not limited to, research into

1 cleantech technology that uses wind, solar, biomass, and hydrogen  
2 technologies that result in cleaner air and water, encourage the  
3 reuse of materials, and result in reductions of greenhouse gas  
4 emissions.

5 (2) The reference to “Section 501(a)” in Section 41(b)(3)(C) of  
6 the Internal Revenue Code, relating to contract research expenses,  
7 is modified to read “this part or Part 10 (commencing with Section  
8 17001).”

9 (c) (1) The provisions of Section 41(c)(4) of the Internal  
10 Revenue Code relating to the election to use an alternate  
11 incremental credit apply, except that the reference to the  
12 “Secretary” in Section 41(c)(4)(B) of the Internal Revenue Code  
13 shall be modified to, instead, refer to the “Franchise Tax Board.”

14 (2) Section 41(c)(6) of the Internal Revenue Code, relating to  
15 gross receipts, is modified to take into account only those gross  
16 receipts from the sale of property held primarily for sale to  
17 customers in the ordinary course of the taxpayer’s trade or business  
18 that is delivered or shipped to a purchaser within this state,  
19 regardless of freight on board (f.o.b.) point or any other condition  
20 of the sale.

21 (d) Section 41(h) of the Internal Revenue Code, relating to  
22 termination, shall not apply.

23 (e) Section 41(g) of the Internal Revenue Code, relating to  
24 special rule for passthrough of credit, is modified by each of the  
25 following:

26 (1) The last sentence shall not apply.

27 (2) If the amount determined under Section 41(a) of the Internal  
28 Revenue Code for any taxable year exceeds the limitation of  
29 Section 41(g) of the Internal Revenue Code, that amount may be  
30 carried over to other taxable years under the rules of subdivision  
31 (g), except that the limitation of Section 41(g) of the Internal  
32 Revenue Code shall be taken into account in each subsequent  
33 taxable year.

34 (f) Any deduction otherwise allowed under this part for any  
35 amount paid or incurred by the taxpayer upon which the credit is  
36 based shall be reduced by the amount of the credit allowed by this  
37 section.

38 (g) In the case where the credit allowed by this section exceeds  
39 the “tax,” the excess may be carried over to reduce the “tax” in

1 the following year, and the succeeding eight years if necessary,  
2 until the credit has been exhausted.

3 (h) This section shall remain in effect only until January 1, 2013,  
4 and as of that date, is repealed. However, any unused credit may  
5 be carried over and used after that repeal date in accordance with  
6 subdivision (g).

7 SEC. 8. Section 23615 is added to the Revenue and Taxation  
8 Code, to read:

9 23615. (a) Notwithstanding any provision of law to the  
10 contrary, and except as otherwise provided in this section, up to  
11 50 percent of any unused qualified tax credit allowed to a qualified  
12 buyer may be sold or traded to, and used by, a qualified buyer.

13 (b) For purposes of this section:

14 (1) "Qualified buyer" means any company that employs workers  
15 in this state.

16 (2) "Qualified seller" means a taxpayer that was allowed tax  
17 credits under Section 23613 or 23614.

18 (3) "Qualified tax credit" means a tax credit allowed to a  
19 taxpayer under Section 23613 or 23614.

20 (c) Unused tax credits may be sold or traded by a qualified seller  
21 during any taxable year beginning on or after January 1, 2008, but  
22 may be used by a qualified buyer only for taxable years beginning  
23 on or after January 1, 2009.

24 (d) A qualified seller and qualified buyer shall apply to the  
25 Franchise Tax Board, in the form and manner determined by the  
26 board, for the purchase and sale of, or the trade of, any unused  
27 qualified tax credit under this section.

28 SEC. 9. This act provides for a tax levy within the meaning of  
29 Article IV of the Constitution and shall go into immediate effect.